

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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RYAN ALEXANDER SIMPSON, *et al.*,

Case No. 2:19-cv-00568-RFB-GWF

Petitioners/Plaintiffs,

ORDER

V.

WILLIAM BARR, *et al.*,

Respondents/Defendants.

15 Before the Court is Petitioner Ryan Alexander Simpson’s Motion for Temporary
16 Restraining Order (“TRO”). ECF No. 1.¹ The Court ruled on the motion in part on April 8, 2019,
17 denying Petitioner’s request to stay his pending deportation. ECF No. 8. The Court
18 simultaneously deferred ruling on Petitioner’s request for relief from his detention pending
19 deportation, ordering that Respondents provide notice of Petitioner’s deportation status and
20 detention status. *Id.* Having reviewed the subsequent notices and briefs form the parties, for the
21 reasons stated below, the Court denies the Motion.

I. PROCEDURAL BACKGROUND

24 On April 5, 2019, Petitioner filed a writ of habeas corpus, asserting the following bases for
25 relief: (1) violation of the Immigration and Nationality Act and its applicable regulations; (2)
26 violation of the Due Process Clause as to Petitioner’s removal from the United States; (3) violation

²⁸ ¹ Petitioner and his wife, Sami Huong Simpson’s (“Sami Simpson”), simultaneously bring a civil suit. The Court addresses only Petitioner’s petition for writ of habeas corpus herein.

1 of the Administrative Procedure Act as to Petitioner’s removal from the United States; (4) violation
2 of the Suspension Clause, Article I, § 9, Clause 2 of the federal constitution as to Petitioner’s
3 removal from the United States; (5) violation of the Immigration and Nationality Act and its
4 applicable regulations as to Petitioner’s detention; and (6) violation of the Due Process Clause as
5 to Petitioner’s detention. ECF No. 1. Petitioner originally sought a TRO that stayed his
6 deportation until resolution of pending applications to adjust his immigration status and that
7 released him from custody pending this action. Id. The Court previously denied the request for a
8 stay of Petitioner’s order of removal on April 8, 2019, finding that Petitioner failed to show any
9 basis rendering the order of removal unlawful. ECF No. 8. Petitioner now seeks a TRO that
10 releases him from custody and asks the Court to reconsider its denial of his request for a stay of
11 his deportation. ECF No. 1; see also ECF Nos. 11, 19.

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13 **II. FACTUAL FINDINGS**

14 The Court incorporates its factual findings from its April 8, 2019 Order and makes the
15 following additional findings:

16 Petitioner has been detained subject to a final order of removal for over ninety days. He
17 was initially detained for approximately eighty days in 2017. The order of removal was deferred,
18 and Petitioner was released from custody. The deferral expired on October 11, 2018. After failing
19 to attend a scheduled hearing regarding his pending application to adjust his immigration status on
20 January 8, 2019, Petitioner was detained by ICE for the second time on February 11, 2019.
21 Through counsel, Petitioner filed an application to stay his removal. The application was denied.
22 He also sought to rescind the order of removal. The request was also denied. Petitioner was then
23 scheduled for imminent deportation.

24 After the Court denied Petitioner’s request to stay his deportation in its April 8, 2019 Order,
25 Respondents noticed the Court that it attempted to remove Petitioner from the country by flight on
26 April 9, 2019. Immigration and Customs Enforcement (“ICE”) failed to transport Petitioner to the
27 flight in time. ICE also noticed the Court of its intent to conduct a post-order custody review under
28 8 U.S.C. § 1231(a)(3) given that Petitioner had been detained for over ninety days under the

1 authority of the order of removal. However, instead of conducting the review ICE instead served
2 Petitioner with a Notice of Imminent Removal under the authority provided in 8 C.F.R. §
3 241.4(g)(4). Given that Petitioner is now scheduled for imminent removal on April 24, 2019, ICE
4 determined that the circumstances did not warrant release.

5 Petitioner has since filed, or intends to file, applications to adjust his status and for stateside
6 waiver.
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8 **III. LEGAL STANDARD**

9 The analysis for a temporary restraining order is “substantially identical” to that of a
10 preliminary injunction. Stuhlbarg Intern. Sales Co, Inc. v. John D. Brush & Co., Inc., 240 F.3d
11 832, 839 n.7 (9th Cir. 2001). A preliminary injunction is “an extraordinary remedy that may only
12 be awarded upon a clear showing that the plaintiff is entitled to such relief.” Winter v. Natural
13 Res. Def. Council, Inc., 555 U.S. 7, 22 (2008). To obtain a preliminary injunction, a plaintiff must
14 establish four elements: “(1) a likelihood of success on the merits, (2) that the plaintiff will likely
15 suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in
16 its favor, and (4) that the public interest favors an injunction.” Wells Fargo & Co. v. ABD Ins. &
17 Fin. Servs., Inc., 758 F.3d 1069, 1071 (9th Cir. 2014), as amended (Mar. 11, 2014) (citing Winter,
18 555 U.S. 7, 20 (2008)). A preliminary injunction may also issue under the “serious questions”
19 test. Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1134 (9th Cir. 2011) (affirming the
20 continued viability of this doctrine post-Winter). According to this test, a plaintiff can obtain a
21 preliminary injunction by demonstrating “that serious questions going to the merits were raised
22 and the balance of hardships tips sharply in the plaintiff’s favor,” in addition to the other Winter
23 elements. Id. at 1134–35 (citation omitted).

24 25 **IV. DISCUSSION**

26 The Court first declines to reconsider its denial of Petitioner’s request to stay his
27 deportation. Petitioner’s initial application to adjust status was denied. Thus, while Petitioner has
28 submitted additional applications to adjust his status, “a pending application for immigration status

1 does not entitle an alien to a stay of deportation.” Armstrong v. Immigration & Naturalization
2 Serv., 445 F.2d 1395, 1396 (9th Cir. 1971) (cited with approval by Mahroozadeh v. I.N.S., 15 F.3d
3 1087 n.1 (9th Cir. 1993)).

4 The Court now turns to Petitioner’s request for relief from detention pending his removal.
5 Under 8 C.F.R. § 241.4(g)(4), a post-custody review will not be conducted if the detained alien is
6 notified that an order of removal is ready to be executed. Petitioner has been notified of his
7 imminent removal, most recently on April 11, 2019. Petitioner therefore fails to show a likelihood
8 of success on the merits of his claims; he has not demonstrated that his continued detention, given
9 his imminent removal in conjunction with the Notice of Imminent Removal, violates the applicable
10 rules and regulations.

11

12 **V. CONCLUSION**

13 **IT IS THEREFORE ORDERED** that the Court DENIES Petitioner’s Motion for
14 Temporary Restraining Order (ECF No. 1).

15 **IT IS FURTHER ORDERED** that the Court DENIES as moot Respondents’ Motion for
16 Extension of Time (ECF No. 16).

17 **IT IS FURTHER ORDERED** that Respondents shall file a notice updating the Court on
18 Petitioner’s deportation status by Friday, April 26, 2019.

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20 DATED this 23rd day of April, 2019.

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22 **RICHARD F. BOULWARE, II**
23 **UNITED STATES DISTRICT JUDGE**